

CHAPTER Env-Wt 800 COMPENSATORY MITIGATION

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 800 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 801 PURPOSE, APPLICABILITY, AND TYPE OF COMPENSATORY MITIGATION REQUIRED

Env-Wt 801.01 Purpose. The purpose of this chapter is to establish the criteria and procedures for submission and review of compensatory mitigation proposals that compensate for the loss of wetland functions and values resulting from permitted permanent impacts to jurisdictional areas, including permanent impacts to stream banks and stream channels.

Source. #4352, eff 1-4-88; ss by #5762, eff 12-21-93; amd by #6219, eff 4-4-96; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97; repealed and moved by #7205, eff 2-24-00 (See Env-C 614 Administrative Fines)

New. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #9717, eff 5-25-10

Env-Wt 801.02 Applicability. This chapter shall apply to all compensatory mitigation proposals required by Env-Wt 302.03.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 801.03 Type of Compensatory Mitigation Required.

(a) The procedure for submittal and review of compensatory mitigation proposals shall be as specified in (b) and (c), below.

(b) The applicant shall first consider permittee-responsible mitigation opportunities and, if permittee-responsible mitigation is feasible, the applicant shall propose such mitigation.

(c) If permittee-responsible mitigation is not feasible for permanent wetlands impacts, the applicant shall provide:

- (1) The explanation and documentation relative to preservation of upland buffer specified in Env-Wt 803.07(b);
- (2) The explanation and documentation relative to restoration and creation of wetlands on the property specified in Env-Wt 803.07(c); and
- (3) Payment of an in-lieu fee that can be pooled with similar payments from other projects as contemplated by RSA 482-A:28.

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(d) If permittee-responsible mitigation is not feasible for permanent stream crossing impacts, the applicant shall provide:

- (1) An explanation and documentation relative to stream restoration and enhancement activities on the property and within the Hydrologic Unit Code 12 (HUC-12) watershed, as developed by the USGS, as specified in Env-Wt 803.07(c);
- (2) An explanation and documentation relative to preservation of uplands specified in Env-Wt 803.07(b); and
- (3) Payment of an in-lieu fee that can be pooled with similar payments from other projects as contemplated by RSA 482-A:28.

Source. #8911, eff 6-20-07; ss by #9717, eff 5-25-10

PART Env-Wt 802 DEFINITIONS

Env-Wt 802.01 “Conservation easement” means a legal agreement between a landowner and a land trust or governmental agency that permanently limits uses of the land in order to protect its conservation values.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 802.02 “Conservation interest” means:

- (a) The fee simple ownership of a parcel of land where the land is to be protected from development in perpetuity; or
- (b) A conservation easement.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 802.03 “In-lieu fee payment” means a form of compensatory mitigation where funds are provided as contemplated by RSA 482-A:28 in lieu of completing permittee-responsible mitigation.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 802.04 “Permittee-responsible mitigation” means a form of compensatory mitigation where an aquatic resource restoration or creation project in accordance with Env-Wt 804 or a preservation project in accordance with Env-Wt 805 is undertaken by the permittee, for which the permittee retains full responsibility.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 802.05 “Qualified Professional” means an individual with a combination of education and experience regarding identification and understanding of hydric soils, hydrophytic vegetation, and wetland hydrology, sufficient to enable the individual to evaluate wetland systems and to create the conditions necessary to sustain a wetland ecosystem.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

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PART Env-Wt 803 COMPENSATORY MITIGATION PROPOSALS

Env-Wt 803.01 Permittee-Responsible Mitigation Proposals. For a project for which permittee-responsible mitigation is proposed, the applicant shall submit:

- (a) For a wetland impact project, a plan and a report, prepared by a qualified professional, that:
 - (1) Identifies the size of the impact to the jurisdictional area(s);
 - (2) Identifies the type(s) of jurisdictional area(s) to be impacted, as classified by the applicant in accordance with US Fish and Wildlife Service Manual FWS/OBS-79/31 Classification of Wetlands and Deepwater Habitats of the United States, Cowardin et al, 1979, reprinted 1992;
 - (3) Identifies the location of the mitigation site relative to other protected lands with an explanation of how the site meets the goals stated in Env-Wt 803.03;
 - (4) Explains why the mitigation site comprises a resource with a functional value equal to or greater than the jurisdictional area(s) impacted by the project;
 - (5) Includes a detailed account of the compensatory mitigation recommendations provided by the conservation commission or governing body from the town in which the project is located, if any; and
 - (6) For a project having impacts within a designated river corridor as defined by RSA 483:4, XVIII, includes a detailed account of the recommendations provided by the local river management advisory committee established pursuant to RSA 483:8-a; and
- (b) For a stream impact project, a plan and a report, prepared by a qualified professional, that:
 - (1) Identifies the size and type(s) of jurisdictional area(s) to be impacted;
 - (2) Identifies the location of the mitigation site with an explanation of how the site meets the goals stated in Env-Wt 803.03;
 - (3) Explains how the compensatory mitigation proposal adds value to the aquatic resource;
 - (4) Includes a detailed account of the compensatory mitigation recommendations provided by the conservation commission or governing body from the town in which the project is located, if any; and
 - (5) For a project having impacts within a designated river corridor as defined by RSA 483:4, XVIII, includes a detailed account of the recommendations provided by the local river management advisory committee established pursuant to RSA 483:8-a; and
- (c) For a wetland impact project or a stream impact project, a functional assessment, prepared by a qualified professional, of the impacted jurisdictional area(s) and proposed mitigation site(s) using:
 - (1) The U.S. Army Corps of Engineers New England District highway methodology workbook supplement, 1999 edition; and
 - (2) Data on the surrounding area including, but not limited to:
 - a. Land use;
 - b. Soils;
 - c. Habitat;

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- d. Natural community classification in accordance with the “Natural Community Systems of New Hampshire, prepared by the NH department of resources and economic development, natural heritage bureau (DRED-NHB), and the Nature Conservancy (TNC), dated December 2005;
- e. Whether there are any rare, special concern, or state or federally listed threatened or endangered species present, including any flora, fauna, or migratory species; and
- f. Exemplary natural communities identified by the DRED-NHB.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; amd by #9717, eff 5-25-10

Env-Wt 803.02 In-Lieu Fee Mitigation Proposals. For a project for which compensatory mitigation is proposed as an in-lieu fee payment, the applicant shall submit:

- (a) A plan and a report, prepared by the applicant or a qualified professional, that identifies:
 - (1) The size of the impact to the jurisdictional area(s);
 - (2) The type(s) of jurisdictional area(s) to be impacted; and
 - (3) An explanation of what factors were considered relative to preservation of uplands or restoration or creation of wetlands, and how those factors affected the applicant’s decision that permittee-responsible mitigation opportunities are not practicable and a payment is allowed under Env-Wt 803.07; and
- (b) A functional assessment, prepared by a qualified professional, of the impacted jurisdictional area(s) using:
 - (1) The U.S. Army Corps of Engineers New England District highway methodology workbook supplement, 1999 edition; and
 - (2) Data on the surrounding area including, but not limited to:
 - a. Land use;
 - b. Soils;
 - c. Habitat;
 - d. Natural community classification in accordance with the “Natural Community Systems of New Hampshire”, prepared by the DRED-NHB and TNC, dated December 2005;
 - e. Whether there are any rare, special concern, or state or federally listed threatened or endangered species present, including any flora, fauna, or migratory species; and
 - f. Exemplary natural communities identified by the DRED-NHB.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

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Env-Wt 803.03 Compensatory Mitigation Site Location.

(a) For a project for which permittee-responsible mitigation is proposed, the applicant shall give preference to any mitigation site that:

- (1) Is located in the same watershed, as defined in Env-Wt 101, as the impacted jurisdictional area(s); and
- (2) Abuts land that already is subject to a conservation interest.

(b) If a stream crossing project is not a replacement for an existing tier 3 stream crossing, the applicant may propose, as mitigation, upgrading a similar tier 2 or tier 3 stream crossing within the same watercourse or in the same town as the project.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #9717, eff 5-25-10

Env-Wt 803.04 Compensation Amount.

(a) The applicant may propose a combination of compensatory mitigation types, listed in Table 800-1, to meet the requirements of this section.

(b) For a project for which permittee-responsible mitigation is proposed, the department shall not require the applicant to propose mitigation ratios exceeding the ratios as listed in Table 800-1 for approval of any project under this chapter, provided, however, that nothing herein shall prevent the department from accepting a proposal that exceeds the mitigation ratios listed in Table 800-1.

(c) As required by RSA 482-A:30, the department shall calculate the amount of an in-lieu fee payment by summing the following items:

- (1) The cost that would have been incurred if a wetland of the same type was constructed at the ratios listed in Table 800-1 based on a price of \$65,000 per acre of wetland created, adjusted according to the annual simple rate of interest on judgments established by RSA 336:1, II;
- (2) The area of wetlands that would need to be constructed, at the ratios listed in Table 800-1, times the cost of land where the impact is occurring as calculated by the assessed land values determined by the NH department of revenue administration which are equalized and divided by the number of acres in each municipality to yield a per acre equalized land value; and
- (3) An administrative cost equaling 5% of the sum of (c)(1) and (2), above.

(d) For a project for which the applicant proposes a combination of permittee-responsible mitigation and an in-lieu fee payment, the department shall not require the applicant to propose a combined total that exceeds the mitigation ratios as listed in Table 800-1.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 803.05 Compensatory Mitigation Ratios.

(a) For permittee-responsible mitigation other than for stream impacts, the applicant shall demonstrate that the compensatory mitigation plan meets or exceeds the ratios listed in Table 800-1, relative to the amount of impacted jurisdictional areas:

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Table 800-1 Minimum Compensatory Mitigation Ratios

Resource Type	Creation	Restoration	Preservation of Upland Buffer
Bog	N/A	2:1	15:1
Tidal Wetlands	3:1	2:1	15:1
Forested	1.5:1	1.5:1	10:1
Undeveloped Tidal Buffer Zone	N/A	2:1	3:1
All Other Jurisdictional Areas	1.5:1	1:1	10:1

(b) For permittee-responsible mitigation for stream impacts, the applicant shall demonstrate that the total amount of compensatory mitigation area meets or exceeds the total amount of impacted stream area, including the stream bottom and associated stream banks.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #9717, eff 5-25-10

Env-Wt 803.06 Alternative Compensatory Mitigation Proposals.

(a) Compensatory mitigation proposals shall meet or exceed the ratios listed in Table 800-1, unless the applicant proposes an alternative that will have greater benefit to water quality, wildlife and their habitat(s), or other functions and values of wetlands and surface waters identified in RSA 482-A:1 or to one or more of the following:

- (1) Exemplary natural communities as identified by the DRED-NHB;
- (2) Habitat that supports rare, threatened, or endangered species, or species of concern, as identified by the natural heritage bureau or by the New Hampshire department of fish and game's New Hampshire Wildlife Action Plan, 2005; or
- (3) Ecologically important lands as designated or similarly identified by the local river management advisory committee, municipality or other state or federal agencies for protection of biodiversity values such as those listed in (1) or (2), above.

(b) An alternative compensatory mitigation proposal may include restoration of functions within a degraded jurisdictional area.

(c) An alternative compensatory mitigation proposal shall meet all other applicable requirements of Env-Wt 800.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 803.07 Criteria for Acceptance of In-Lieu Fee Payments.

(a) An in-lieu fee payment shall not substitute for the requirement to avoid or minimize impacts per Env-Wt 302.03.

(b) An applicant shall evaluate available upland buffer preservation opportunities in accordance with Env-Wt 804, and provide documentation and an explanation of how the upland buffer areas are not practicable based on the following:

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(1) The property has upland and wetland areas remaining after the development has been designed, but does not meet or exceed the ratios in Table 800-1 or can not meet the buffer requirement in Env-Wt 804.02;

(2) Preservation was discussed by the municipal conservation commission and acceptance of the easement was declined as an option, as demonstrated by minutes from the meeting(s) at which the proposal was considered or a letter signed by the conservation commission; and

(3) Acceptance of the easement was declined by other conservation organizations as cited in Env-Wt 501.06(b)(3), as demonstrated by written responses from such organizations.

(c) An applicant shall evaluate available restoration and creation opportunities in accordance with Env-Wt 805 and provide documentation and an explanation of what was considered and why restoration or creation will not produce a valuable and sustainable jurisdictional area.

(d) An in-lieu fee payment shall only be accepted in the following circumstances:

(1) As specified in RSA 482-A:28, I, the project impacts less than one acre of wetlands and meets the criteria for a U.S. Army Corps of Engineers state programmatic general permit; or

(2) As specified in RSA 482-A:28, II, the project is for a public roadway or public utility, exceeds one acre of impact, and meets the criteria for a U.S. Army Corps of Engineers state programmatic general permit.

(e) The department shall accept a proposal for an in-lieu fee payment if the proposal meets the requirements of (b), (c), and (d), above, and the mitigation types or combination of mitigation types listed in Table 800-1 that are available in the same watershed as the impacts for compensating jurisdictional area losses are not practicable.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 803.08 Notification of Decision on a Proposed In-Lieu Fee Payment.

(a) The department shall determine whether it is appropriate for an applicant proposing a dredge or fill activity to provide an in-lieu fee payment instead of providing permittee-responsible mitigation, by reviewing the functional assessment and alternatives provided and applying the criteria specified in Env-Wt 803.07.

(b) The department shall notify the applicant and the town in which the project is located in writing of its decision on the proposal.

(c) If the project meets the criteria for in-lieu fee payment, the notice issued pursuant to (b), above, shall include:

(1) A calculation of the payment amount that the applicant must pay prior to issuance of a permit, as specified in Env-Wt 806.05; and

(2) A statement that if the in-lieu fee payment is not paid as specified in Env-Wt 806.05, the department will deny the permit.

(d) If the project does not qualify for an in-lieu fee payment, the notice issued pursuant to (b), above, shall specify the reason(s) and a date by which the applicant must submit a revised mitigation proposal.

(e) If the in-lieu fee payment is not paid as specified in these rules, or if the applicant does not submit a revised mitigation proposal required under (d), above, the department shall deny the permit.

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(f) Upon receiving notification that a proposal for in-lieu fee payment has been accepted and that the permit will be issued once payment has been received, the applicant shall transmit the payment to the department.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

PART Env-Wt 804 UPLAND BUFFER PRESERVATION

Env-Wt 804.01 Location and Value. An upland buffer preservation area offered for compensatory mitigation shall:

(a) Be adjacent to a jurisdictional area that meets or exceeds the function and values of the jurisdictional areas to be impacted by the project, as determined through a functional assessment;

(b) Benefit the resource to be protected by maintaining water quality, wildlife habitat, or other functions and values of wetlands and surface waters; and

(c) Be consistent with the local and regional land use conservation goals and any applicable river corridor management plans developed per RSA 483:10.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 804.02 Dimensions.

(a) Subject to (b), below, an upland buffer shall be a minimum of 100 feet wide and contiguous with the protected resource(s).

(b) For permittee-responsible stream mitigation, an upland riparian buffer shall be a minimum of 300 feet in length, as measured parallel to the centerline of the stream, and 100 feet in width, as measured from the top of bank, on both sides of the watercourse.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07; ss by #9717, eff 5-25-10

Env-Wt 804.03 Incorporated Jurisdictional Areas. An area subject to preservation may incorporate a jurisdictional area provided:

(a) The upland buffer entirely surrounds the jurisdictional area or at least abuts those undeveloped upland portions under sole ownership; and

(b) The upland buffer area is equal to or greater than 50% of the minimum total compensatory mitigation area required under Env-Wt 803.05.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 804.04 Criteria for Evaluation of an Upland Buffer. To propose compensatory mitigation based on upland buffer preservation, the applicant shall:

(a) Submit a functional assessment of the jurisdictional area(s) to be impacted;

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- (b) Describe how the property proposed for preservation will be legally protected in perpetuity;
- (c) If protective measures already exist on the mitigation site(s), identify the existing protective measures and describe how the proposed additional measures would provide greater protection of the aquatic resources on the site(s);
- (d) Delineate all wetlands within the proposed compensatory mitigation area and all contiguous wetlands and surface waters as follows:
 - (1) For compensatory mitigation areas comprising 20 acres or more, delineation shall be completed:
 - a. By a certified wetland scientist in accordance with Env-Wt 301.01; or
 - b. By interpretation of aerial photography, published soil surveys, U.S. Fish and Wildlife Service National Wetland Inventory maps, or other available information; and
 - (2) For compensatory mitigation areas comprising less than 20 acres, delineation shall be completed by a certified wetland scientist in accordance with Env-Wt 301.01;
- (e) Identify the property or portion of property on a tax map and USGS quad map;
- (f) Identify the easement holder, which shall not be the owner in fee of the property;
- (g) Submit a property survey plan in accordance with Env-Wt 807.10 that identifies the boundaries of the compensatory mitigation area;
- (h) Submit a draft legal description of the compensatory mitigation area;
- (i) Submit the items required by Env-Wt 501.02(a)(6) or (a)(7);
- (j) Submit color photographs to illustrate important site features with location(s) noted on the property survey plan, including the location(s) of:
 - (1) Significant ecological features;
 - (2) Existing buildings, structures, or trails;
 - (3) Wells;
 - (4) Power lines or pipelines;
 - (5) Historic resources; and
 - (6) Other improvements that will be in place at the time of the establishment of the compensatory mitigation area; and
- (k) Submit a plan for the stewardship of the property in accordance with Env-Wt 807.14.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

PART Env-Wt 805 WETLAND RESTORATION OR CREATION

Env-Wt 805.01 Wetland Restoration or Creation.

- (a) A compensatory mitigation proposal based on wetland restoration or creation shall replace the types of wetlands to be impacted and the functions affected and shall include, where practicable, the provision for a contiguous upland buffer.

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(b) Wetland restoration or creation proposals shall not be accepted as compensatory mitigation for sites at which remediation is required to correct unpermitted activities in jurisdictional areas.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 805.02 Criteria for Evaluation. To propose compensatory mitigation based on wetland restoration or creation, the applicant shall:

- (a) Give preference to wetland restoration over wetland creation;
- (b) Submit a functional assessment in accordance with Env-Wt 803.01(b) of the impacted jurisdictional area(s) and the proposed mitigation site(s);
- (c) Have the wetland delineation prepared by a certified wetland scientist in accordance with Env-Wt 301.01;
- (d) Identify and evaluate the potential for occurrence of rare or special concern species, state or federally listed threatened or endangered species, species at the extremities of their ranges, migratory species, and exemplary natural communities identified by the DRED-NHB;
- (e) Include connections to wetlands, surface waters, or associated upland wildlife and vegetated corridors to enhance the wetland or surface water use and colonization by native flora and fauna;
- (f) Identify the source of wetland hydrology for the proposed mitigation area to confirm that the site has a suitable geomorphic setting for aquatic resource restoration or creation;
- (g) Explain how the proposal creates hydrologic conditions or land connections that will produce the desired wetland functions and values to be restored or created;
- (h) Provide wetland micro and macro topography in the proposal to achieve hydrologic diversity;
- (i) Identify the relationship of the proposed mitigation site to any jurisdictional area(s) in the immediate vicinity, the proximity to existing infrastructure and adjacent properties, and whether any lands are protected in the vicinity of the mitigation site(s);
- (j) Provide documentation on how the proposed wetland restoration and creation site will not be affected by anticipated secondary and cumulative impacts from the construction site;
- (k) For restoration proposals, explain the history of the filled or disturbed area, to the extent known;
- (l) Include plans prepared in accordance with Env-Wt 805.03; and
- (m) Include a report describing how annual monitoring will be conducted following construction of the mitigation site(s), identifying the name of the qualified professional responsible for monitoring, proposed measures of success, and the remedial measures to be taken during construction and after completion of the project to promote success of the mitigation area.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 805.03 Plans for Wetland Restoration or Creation Projects. The applicant shall include the following in the plans required by Env-Wt 805.02(l):

- (a) Existing and proposed grades, with critical and typical cross sections showing:
 - (1) Existing and proposed grades;

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- (2) Predicted water fluctuations; and
- (3) Proposed wetland cover types for the mitigation area;
- (b) Construction procedures and timing as follows:
 - (1) The name of the qualified professional responsible for oversight of the mitigation work;
 - (2) The proposed contingency measures for unexpected issues; and
 - (3) The timing and sequence of events;
- (c) A planting proposal, with preference given to native wetland plants and natural communities with localized genetic material, as follows:
 - (1) Plant species and quantities;
 - (2) Source of planting materials or whether the plan relies on natural re-vegetation;
 - (3) Plant stock size and zones of predicted plant occurrence;
 - (4) Plant survival goals;
 - (5) The proposed locations of native plant stock and the rate and type of seeding;
 - (6) When and where seeding or planting will take place; and
 - (7) Notation of dead snags, tree stumps, or logs per acre, where appropriate, to provide structure and cover for wildlife and food chain support;
- (d) Documentation of existing and proposed soils as follows:
 - (1) The existing soils on the proposed mitigation site;
 - (2) The source of soils to be placed on the site;
 - (3) The likely seed bank composition of soils;
 - (4) The depth of proposed growing medium; and
 - (5) The soil properties such as texture and organic content;
- (e) Erosion control notes and details to minimize or prevent sediment from entering adjacent, undisturbed wetlands or surface waters;
- (f) Invasive species in the vicinity;
- (g) If applicable, an invasive species control plan; and
- (h) Activities that will be allowed and not allowed within the restoration or creation area.

Source. #8911, eff 6-20-07

PART Env-Wt 806 REQUIREMENTS UPON PERMITTING

Env-Wt 806.01 Notification of Construction Completion. Within 60 days of completing a mitigation project that included restoration or creation of wetlands, the applicant shall:

- (a) Submit a signed letter specifying the date of completion and the anticipated dates of submittal of the annual monitoring reports; and

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(b) Submit a post-construction monitoring report, documenting the conditions of the restored or constructed wetland.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 806.02 Annual Monitoring Report.

(a) The permittee on a project for which mitigation includes wetlands restoration or creation, or both, shall submit an annual monitoring report to the department each year on the date specified in the permit for the time period specified in (b), below.

(b) The annual monitoring report shall document that the hydrology of the mitigation site(s) is appropriate and the area has a 75% success rate of coverage of non-invasive hydrophytic vegetation after 3 full growing seasons following completion of the mitigation work or following additional remedial measures taken as identified in Env-Wt 806.03.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 806.03 Implementation of Remediation Plan.

(a) If an annual monitoring report shows that the wetland restoration or creation area does not have at least 75% coverage of non-invasive hydrophytic vegetation, the permittee shall submit a remediation plan to the department within 45 days of the submittal of that annual monitoring report.

(b) The remediation plan shall identify:

- (1) The problem(s) limiting the success of the mitigation site;
- (2) Measures which need to be taken to address the problem(s); and
- (3) A time schedule on which the permittee will implement the corrective measures.

(c) The department shall approve the proposed remediation plan if the department determines that the plan has a reasonable probability, within 3 full growing seasons following implementation of the remediation plan, of resolving the problem(s) that have caused the restoration or creation to be unsuccessful.

(d) Following department approval of the remediation plan, the applicant shall implement the plan and submit annual reports for the next 3 full growing seasons to demonstrate the success of the remedial measures.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800); ss by #8911, eff 6-20-07

Env-Wt 806.04 Notification of Recorded Conservation Interest.

(a) After the department has issued a permit in accordance with Env-Wt 500 and prior to work commencing on a project for which the mitigation plan requires a conservation interest to be acquired, the permittee shall:

- (1) If the conservation interest is an easement, obtain the signature of the grantee on the document conveying the interest for each parcel to be preserved;

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- (2) Record each document that conveys a conservation interest for each parcel to be preserved at the registry of deeds for the county in which the parcel is located;
- (3) Submit a copy of each recorded document to the department; and
- (4) Submit a digitized polygon file, if available, to be incorporated into the department's geographic information system (GIS) conservation lands layer for the location of compensatory mitigation parcels.

(b) Within 60 days after issuance of the permit, the permittee shall submit verification that the compensatory mitigation area has been marked by permanent monuments and signs indicating the location of the area.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 806.05 Submittal of In-Lieu Fee Payment.

(a) For a project for which the department has notified the applicant of the acceptance of a proposed in-lieu fee payment as specified in Env-Wt 803.08(c), the department shall not issue the permit until the applicant has paid the full amount of the in-lieu fee payment as specified in the notice.

(b) If the applicant does not pay the full amount of the in-lieu fee payment within 120 days of the date of the notice, the department shall deny the application.

(c) The department shall deposit all in-lieu fee payments into the aquatic resource compensatory mitigation fund established by RSA 482-A:29. For each payment deposited, the department shall credit the payment to the watershed that contains the jurisdictional area(s) impacted by the project. For a project that impacts jurisdictional area(s) in more than one watershed, the payment shall be allocated among the watersheds in proportion to impacts.

Source. #8911, eff 6-20-07

PART Env-Wt 807 AQUATIC RESOURCE COMPENSATORY MITIGATION FUND

Env-Wt 807.01 Definitions. For purposes of this part, the following definitions shall apply:

(a) "HUC 8 watershed" means the hydrologic unit code 8 watershed as developed by the U. S. Geological Survey (USGS);

(b) "Public roadway" means a roadway that is owned and maintained by the state or a political subdivision; and

(c) "Public utility project" means a project undertaken by an entity that is regulated by the New Hampshire public utilities commission.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.02 Use of Aquatic Resource Compensatory Mitigation Fund. Costs of the following activities shall be deemed to be "costs related to wetlands creation or restoration, stream restoration, preservation of upland areas adjacent to wetlands, and the subsequent monitoring and maintenance of such areas" and so eligible under RSA 482-A:29, I, for funding from the aquatic resource compensatory mitigation fund ("ARM Fund"):

- (a) Development of final wetland restoration or creation plans;

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(b) Construction costs for wetland restoration or creation such as site clearing and excavation, construction management, consulting fees, permit costs, wetland grading and soil augmentation, disposal costs of excavated materials, planting, and monitoring and maintenance of wetland restoration or creation sites to reduce risk of failure;

(c) Acquisition of land for the protection of mitigation sites in perpetuity and associated costs including property surveys, appraisals, closing costs, and subdivision fees;

(d) Acquisition of conservation interests after a qualified grantee has been identified;

(e) Acquisition of legal services related to the protection of land(s) in perpetuity;

(f) Stewardship of a conservation interest in accordance with Env-Wt 807.14; and

(g) Other aquatic resource improvement or protection projects, such as water quality improvement projects, tidal wetland restoration projects, dam removal projects, stream or river restoration projects, or activities that provide habitat improvement including culvert replacement or removal.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.03 Identification of Eligible Projects.

(a) The department shall announce a request for applications for eligible projects in a HUC 8 watershed, in consultation with the site selection committee per Env-Wt 807.16(b)(4), at least once every 2 years following receipt of a payment for that watershed.

(b) To have a project considered for funding, an applicant shall complete an ARM Fund application in accordance with Env-Wt 807.04 and submit it to the department for review.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.04 Requirements for ARM Fund Applications.

(a) To request funding for an eligible project, the applicant shall complete the ARM Fund application form obtained from the department.

(b) The applicant and landowner(s) shall sign and date the application form. Such signatures shall constitute certification that the information provided is true, complete, and not misleading to the knowledge and belief of the signer.

(c) The applicant shall submit the following with the application form:

(1) A USGS topographic map on which the following areas are shown:

a. The property or portion(s) of the property to be acquired or otherwise protected through a conservation interest with the requested funds, if applicable;

b. The property or portions of the property to be considered for wetland restoration or creation, if applicable; and

c. Any other protected lands within one mile of the outer boundaries of the area identified pursuant to a. or b., above;

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- (2) A description of the property(ies) that includes:
 - a. The location and type of all structures;
 - b. Existing impoundments, if any;
 - c. Existing disturbances, if any; and
 - d. Known or potential contamination sources as identified in the department's GIS, if any;
- (3) A functional assessment or a description of the aquatic resource functions and values of the property(ies) and overall conservation value;
- (4) A map, at a scale that ensures that all details are legible, on which are identified all developed and undeveloped parcels within one-half mile of the outer boundaries of the area that would be restored, created, or protected by the proposed project;
- (5) A map of the property, at a scale that ensures that all details are legible, on which are identified the following:
 - a. Wetlands, surface waters, fields, and forest;
 - b. Any structures;
 - c. All utilities and wells;
 - d. All roads or trails;
 - e. All easements or rights-of-way; and
 - f. Gravel pits or other disturbed areas;
- (6) For a restoration or creation project, a description of restoration or creation work to be completed and the total acreage of the area proposed for restoration or creation that shows the project meets the criteria specified in Env-Wt 807.06;
- (7) For an upland preservation project:
 - a. The total acreage of the land proposed for protection and the acreage of any included jurisdictional area(s); and
 - b. A narrative that shows the project meets the criteria specified in Env-Wt 807.07;
- (8) For other projects, an explanation of why the project is eligible under Env-Wt 807.02;
- (9) A signed and dated statement from each landowner stating the landowner's willingness to have the restoration or creation work performed or willingness to negotiate the acquisition of the properties, as applicable;
- (10) A signed and dated statement by the landowner(s) that:
 - a. Commits the landowner(s) to not selling or otherwise conveying or committing to sell or otherwise convey the property covered by the application except to the applicant for 120 days;
 - b. Commits the landowner(s) to allowing inspection, survey, and appraisal of the property within 120 days from the date of receipt of a copy of the application by the department;

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c. Specifies the price at which the landowner will sell the property, which information shall be treated as confidential under the provisions of RSA 91-A:5, IV and subject to disclosure only with the consent of the landowner until the department has selected the application for funding; and

d. Identifies all liens and encumbrances; and

(11) A budget that includes a complete list of itemized costs and an anticipated time line for expenditures.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.05 Processing of ARM Fund Applications.

(a) The department shall review each application for conformance with the requirements of Env-Wt 807.04 and to determine whether the project meets the criteria of Env-Wt 807.06 or Env-Wt 807.07, as applicable.

(b) The department shall notify the applicant and the municipality(ies) in which the land is located in writing of its decision on the application. If the application is determined to not be acceptable for funding, the notice shall specify the reason(s) for the determination.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.06 Eligibility Criteria for Wetland Restoration or Creation Projects. A project to restore or create wetlands shall be eligible for funding from the ARM Fund when all of the following conditions are met:

(a) The applicant provides a signed and dated statement from a New Hampshire state natural resource protection or management agency, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, or the U.S. Natural Resource Conservation Service, endorsing the project or committing to provide technical support for the work or financial support for the project;

(b) The applicant provides:

(1) Information on how the wetland restoration or creation area will be acquired; or

(2) Written permission signed by the landowner and notarized giving the applicant permission to perform the wetland restoration or creation work;

(c) The applicant provides a list of all needed local, state, and federal authorizations or permits to conduct the wetland restoration or creation work that have been applied for, will be applied for, or have already been acquired; and

(d) The wetland restoration or creation area to be acquired is undeveloped land and free of known and potential contamination sources that are known to the applicant or identified in the department's GIS.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

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Env-Wt 807.07 Eligibility Criteria for Land Protection Projects. A project to acquire a conservation interest shall be eligible for funding from the ARM Fund when all of the following conditions are met:

(a) The applicant is a political subdivision, a governmental agency, or a non-profit, 501(c)(3) organization having land conservation as a principal mission, or provides a signed and dated statement from such an entity stating the willingness of the entity to negotiate the proposed acquisition;

(b) The conservation interest to be acquired meets the criteria specified in Env-Wt 804.01 and Env-Wt 804.03;

(c) The conservation interest to be acquired is in undeveloped land that is free of known contamination;

(d) The conservation interest to be acquired is in land that is not already permanently protected and is not currently owned by the applicant; and

(e) The conservation interest to be acquired will be held by a grantee that meets the criteria specified in Env-Wt 501.06(c).

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.08 Requirements upon Determination of Eligibility.

(a) If a project is selected to receive funding for the restoration or creation of wetlands, the applicant shall submit the following to the department prior to the funds being awarded:

(1) An environmental site assessment prepared in accordance with Env-Wt 807.09(b) through (d), if required pursuant to Env-Wt 807.09(a);

(2) A property survey prepared in accordance with Env-Wt 807.10;

(3) Detailed plans on the restoration or creation site in accordance with Env-Wt 805.03; and

(4) A detailed schedule for restoration or creation work to be carried out.

(b) If a project to conduct wetland restoration or creation is awarded funding, the applicant shall:

(1) Select a qualified contractor using the procurement process prescribed by RSA 21-I:22, IV - VII;

(2) Execute the wetland restoration or creation plan in accordance with the schedule approved by the department;

(3) Adhere to ARM Fund contract conditions;

(4) Provide ongoing monitoring reports in accordance with Env-Wt 806.02; and

(5) Provide a plan for the on-going maintenance or management of the restored or created wetlands, if needed.

(c) If a project is selected to receive funding to acquire a conservation interest, the applicant shall submit the following to the department prior to the funds being awarded:

(1) An environmental site assessment prepared in accordance with Env-Wt 807.09(b) through (d), if required pursuant to Env-Wt 807.09(a);

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- (2) A property survey prepared in accordance with Env-Wt 807.10;
 - (3) An appraisal prepared in accordance with Env-Wt 807.11;
 - (4) A title examination and, if necessary, an opinion of title prepared in accordance with Env-Wt 807.12; and
 - (5) Baseline documentation in accordance with Env-Wt 807.14(c)(1).
- (d) If a project to acquire a conservation interest is awarded funding, the applicant shall:
- (1) Execute the land transaction in accordance with Env-Wt 807.15;
 - (2) Record the deed and survey, if applicable, in accordance with Env-Wt 807.15;
 - (3) Adhere to ARM Fund contract conditions; and
 - (4) Provide a stewardship plan for the property in accordance with Env-Wt 807.14.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.09 Environmental Site Assessment Requirements.

(a) The applicant shall submit an environmental site assessment for any property that is the subject of a request for funding from the ARM Fund and that, based on information in the department's GIS or a site walk performed by the department, contains known or potential sources of contamination.

(b) An environmental site assessment shall be performed by an environmental consultant who has at least 5 years' experience in preparing site assessments.

(c) An environmental site assessment shall include the following:

- (1) A history of land usage;
 - (2) A description of the site inspection;
 - (3) A review of all department records relating to site investigations or other environmental assessments for all properties located within 1,000 feet of the property;
 - (4) A description of the review conducted pursuant to (3), above, including the date of the review and who conducted the review;
 - (5) A description of the findings from any files reviewed pursuant to (3), above; and
 - (6) An opinion by the consultant that there are no contamination concerns for the property(ies) proposed for protection.
- (d) The applicant shall submit the environmental site assessment to the department upon completion.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

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Env-Wt 807.10 Survey Requirements.

(a) If an accurate survey does not already exist for property that is the subject of a request for funding from the ARM Fund, the applicant shall obtain a property survey after the applicant receives notification from the department that the applicant's application for funding has been selected and prior to the funding being provided.

(b) The applicant shall provide the department with 2 paper copies, a mylar copy suitable for recording at the registry of deeds, and a digitized polygon file of the standard property survey for the property that is the subject of the proposed project.

(c) A New Hampshire licensed surveyor shall perform a standard property survey in accordance with the standards specified in Lan 503.03 – Lan 503.10.

(d) The turning points of the boundaries shall be marked with permanent monuments and the boundary lines shall be blazed or painted so that they can be located in the field.

(e) The survey plan shall include:

- (1) The property boundaries and acreage; and
- (2) The method and accuracy of the survey.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.11 Appraisal Requirements.

(a) The applicant requesting funding from the ARM Fund for acquisition of a conservation interest shall obtain an appraisal or an updated appraisal after the applicant has received notification from the department that the applicant's application for funding has been selected and prior to the funding being provided.

(b) If an appraisal has not been completed within 120 days of the notification, the money will revert back to the ARM fund.

(c) An appraisal shall be conducted for each property included in the proposed project, based on the terms of the proposed conservation interest instrument and the survey performed in accordance with Env-Wt 807.10.

(d) The appraisal shall be conducted to determine the fair market value of the conservation interest in accordance with the Uniform Standards of Professional Appraisal Practice established by The Appraisal Foundation.

(e) The applicant shall submit the appraisal to the department.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.12 Title Examination Requirements.

(a) The applicant for funding from the ARM Fund for acquisition of a conservation interest shall obtain a title examination or an updated title examination after the applicant has received notification from the department that the applicant's application for funding has been selected and prior to the funding being provided.

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(b) The title examination shall be conducted for each property included in the proposed project.

(c) The title examination shall be conducted to ascertain that there is clear and marketable title to the property according to the "New Hampshire Title Examination Standards" of the New Hampshire Bar Association.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.13 Conservation Interest Instrument Requirements.

(a) Each conservation interest instrument shall:

- (1) Uphold the conservation purposes of the transaction in perpetuity;
- (2) Protect the quality of wetlands and surface water resources associated with the property;
- (3) Safeguard the environmental values of the property that are dependent on aquatic resources; and
- (4) Convey an interest to the State of New Hampshire that allows the state to enforce the conditions and restrictions of the easement and to recover the costs of such enforcement from the easement holder or property owner, or both.

(b) Each conservation interest instrument shall contain, at a minimum, the following restrictions:

- (1) No industrial or commercial activities or improvements shall occur on the property except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, subject to such conditions as are specified in the instrument;
- (2) No land surface alterations shall occur on the property, such as filling, excavation, mining, and dredging, except to the extent that they do not degrade the aquatic resource for which the project was funded and do not pose a risk of such degradation;
- (3) No wastes generated off the property shall be disposed of, stored, or discharged on the property;
- (4) No substances that would be hazardous waste if discarded or abandoned shall be disposed of on the property, and no such substances shall be stored or applied on the property except in conjunction with any allowed water supply, agricultural, forestry, or outdoor recreational activities, and provided the storage and use do not threaten aquatic resource protection and are specifically allowed by the instrument, subject to such conditions as are specified in the instrument;
- (5) No acts or uses shall occur on the property that would:
 - a. Degrade wetlands or water quality;
 - b. Cause an unsustainable quantity of water to be withdrawn; or
 - c. Harm state or federally recognized rare, threatened, or endangered species; and
- (6) Activities specifically allowed by the instrument, such as community drinking water supply, agriculture, forestry and outdoor recreation, shall be conducted in accordance with a plan, best management practices, or conditions as set forth in the instrument, subject to such conditions as are specified in the instrument.

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(d) In the case of a conservation easement, the owner of the fee shall retain all other customary rights and privileges of ownership including the right to privacy and to carry out all regular agricultural and forestry practices that are not prohibited by the restrictions in the easement.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.14 Stewardship Requirements.

- (a) The grantee shall be responsible for ongoing stewardship of each conservation interest acquired.
- (b) The grantee shall determine the financial and management implications of each conservation interest and establish that it has or can obtain funds to monitor and enforce the interest.
- (c) To fulfill its obligations under (a), above, the grantee shall:
 - (1) Prior to acquisition of the conservation interest, prepare and submit to the department a baseline documentation report that describes, in writing and with photographs, the condition of the property(ies) that will be subject to the interest at the time of acquisition, including aquatic resource functions and values;
 - (2) Prepare and submit to the department an annual property inspection that confirms that boundaries are being maintained and land is being appropriately protected according to the terms of the conservation interest;
 - (3) For conservation easements, contact landowners annually to inform the landowners of their obligations under the easement;
 - (4) Prepare and submit an annual stewardship report to the department that contains the following:
 - a. A description of the site inspection conducted;
 - b. A description of any physical changes to the property;
 - c. A description of any landowner contact conducted;
 - d. A description of any conditions that violate or may violate the intent of the conservation interest; and
 - e. A description, including current status, of any violations witnessed and remedial steps taken.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.15 Final Approval, Execution, and Deed Recordation.

- (a) The department shall approve the acquisition of a conservation interest if, for each property to be included in the conservation interest, the applicant:
 - (1) Confirms that the property is not contaminated in accordance with Env-Wt 807.09;
 - (2) Confirms the property boundaries and acreage in accordance with Env-Wt 807.10;
 - (3) Negotiates a price not to exceed the fair market value determined in accordance with Env-Wt 807.11;

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- (4) Confirms that there is clear and marketable title for the property determined in accordance with Env-Wt 807.12;
- (5) Submits a deed that conforms to the requirements of Env-Wt 807.13; and
- (6) Submits the baseline documentation prepared in accordance with Env-Wt 807.14(c)(1).

(b) Final execution, payment of acquisition cost, and recording of the necessary instruments of transfer shall be conducted after final approval.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.16 Site Selection Committee.

- (a) The site selection committee for the ARM Fund shall be as specified in RSA 482-A:32.
- (b) As specified in RSA 482-A:32, I, the purpose of the site selection committee is to identify projects to be funded from the ARM Fund. To accomplish this purpose, the site selection committee shall:
 - (1) Participate in meetings coordinated by the department to develop operating procedures for the committee and discuss operation of the ARM Fund;
 - (2) Provide guidance on the application ranking and selection criteria that will be used to rank parcels considered for funding;
 - (3) Provide contact information to the department for individuals or organizations that may be knowledgeable on issues or priorities within the HUC 8 watersheds for which requests for eligible projects were made pursuant to Env-Wt 807.03(a);
 - (4) Assist the department in determining dates to request applications to be submitted with specified deadlines for submittal;
 - (5) Oversee the ARM Fund to ensure that funds deposited are considered for disbursement within 2 calendar years from the date of deposit;
 - (6) Evaluate and rank applications in accordance with Env-Wt 807.17 and Env-Wt 807.18;
 - (7) Select the project(s) that will be recommended to the Wetlands Council for funding;
 - (8) Recommend an amount to be disbursed for each project selected; and
 - (9) Review the annual report prepared by the department pursuant to RSA 482-A:33.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.17 Application Ranking and Selection by the Site Selection Committee.

- (a) Pursuant to RSA 482-A:32, for each application funding cycle, the site selection committee shall rank each project for which a request for ARM funding is received within 75 days after the application deadline for that cycle.
- (b) The ranking shall be based on a review of the applications and site walks conducted by the department.

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(c) The site selection committee shall rank the project(s) that are located in the same HUC 8 watershed as the impact areas that paid into the fund.

(d) The site selection committee shall select projects that provide the greatest potential to replace or protect specific wetland functions and values lost by the impacts in the HUC 8 watershed.

(e) The site selection committee shall select projects that at a minimum meet or exceed the ratios listed in Table 800-1.

(f) Where project scores are comparable, preference shall be given to projects that provide the longer term, more beneficial protection mechanism for the project area and its buffer.

(g) To insure successful completion of the project, the site selection committee shall only consider applications for ARM funds that include a realistic budget to accomplish the proposed project's stated objectives and time frame.

(h) The site selection committee shall select the highest ranked projects for each application cycle.

(i) If the department announces a watershed account is ready to be spent and the submitted proposals do not address the priorities for the watershed, then the funds deposited in that account shall remain for another 2 years to be spent following a new application cycle.

(j) Funds that remain in an account after the ARM fund applications have been selected for funding shall be carried over in that watershed account for the next application cycle.

(k) Applications for ARM funds shall be evaluated based on the criteria and points specified in Env-Wt 807.18.

Source. #8911, eff 6-20-07

Env-Wt 807.18 Project Evaluation.

(a) No more than 27 points shall be assigned based on the potential the project has to replace or protect wetland functions and values lost within the HUC 8 watershed, including those that have been identified by the site selection committee as priorities for the application cycle, as follows:

(1) If the application documents that the project will replace 80% or more of the wetland functions and values lost in the HUC 8 watershed, the project shall receive 20 to 27 points;

(2) If the application documents that the project will replace at least 50% but less than 80% of the wetland functions and values lost in the HUC 8 watershed, the project shall receive 13 to 19 points;

(3) If the application documents that the project will replace at least 30% but less than 50% of the wetland functions and values lost in the HUC 8 watershed, the project shall receive one to 12 points;

(4) The project shall receive one to 5 points if the application documents that the project will replace less than 30% of the wetland functions and values lost in the HUC 8 watershed but that it:

a. Will provide other important wetland functions and values; or

b. Is a component of a suite of projects to be funded during the current application cycle, which, when taken as a whole, will replace all functions and values lost in the watershed.

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(b) No more than 27 points shall be assigned based on the overall environmental significance the project provides as follows:

- (1) If the project is located within a source water protection area or overlays a high-yield stratified drift aquifer, the project shall receive one to 9 points;
- (2) If the project will protect endangered, threatened or special concern species or exemplary natural communities documented to occur on the property, the project shall receive one to 9 points; and
- (3) If the project is located in or in close proximity to NH Wildlife Action Plan highest quality wildlife habitat or NH Wildlife Action Plan conservation focal areas, the project shall receive one to 9 points.

(c) No more than 19 points shall be assigned based on the project's proximity and connectivity to the following resources as follows:

- (1) If the project is adjacent to lands protected in perpetuity, the project shall receive 4 points;
- (2) If the project provides a connection between lands that are currently unconnected and which are protected in perpetuity, the project shall receive one to 4 points;
- (3) If the project will protect linkages or over-land connections among and between 1 or more aquatic resource areas, the project shall receive one to 4 points;
- (4) If the project will protect lands within a large unfragmented block of land, relative to the HUC 8 watershed, the project shall receive one to 4 points; and
- (5) If the project is located within the same sub-watershed as the impact area(s), the project shall receive 3 points.

(d) No more than 19 points shall be assigned based on the overall mitigation potential for the project to address the considerations noted below as follows:

- (1) If the project will protect most or all of the aquatic resource, the project shall receive one to 6 points;
- (2) If the project will provide an upland buffer that protects an aquatic resource identified as a prime wetland by a municipality or recognized in a municipal or regional wetland or natural resource study, the project shall receive one to 6 points;
- (3) If the project will protect, at a minimum, a 100 foot upland buffer around most or all of the aquatic resource, the project shall receive one to 4 points; and
- (4) If the project will protect most or all of the HUC 8 watershed of the aquatic resource, the project shall receive one to 3 points.

(e) No more than 8 points shall be assigned based on the cost-effectiveness of the project and partnership potential as follows:

- (1) If the project will provide a cash or in-kind donation match of at least 10%, the project shall receive 3 points;
- (2) If the project area is identified in a federal, or state environmental priority plan other than the Wildlife Action Plan, the project shall receive one to 3 points; and

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- (3) If the project is supported by the host municipality, the project shall receive 2 points.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07

Env-Wt 807.19 Annual Report. The annual report prepared pursuant to RSA 482-A:33 shall include the following for the reporting period covered by the report:

(a) A summary that details the sources of all payments received and all fund expenditures on a per-watershed basis;

(b) A description of each project funded and information on the progress or completion of those projects;

(c) The acreage and type of aquatic resources restored, created, or otherwise protected in each HUC 8 watershed by the projects described pursuant to (b), above; and

(d) The functions gained by the projects described pursuant to (b), above.

Source. #8911, eff 6-20-07

APPENDIX

Rule Section(s)	Statute(s) Implemented
Env-Wt 801	RSA 482-A:1; RSA 482-A:3; RSA 482-A:11; RSA 482-A:28-33
Env-Wt 802	RSA 482-A:1; RSA 482-A:3; RSA 482-A:11; RSA 482-A:28-33
Env-Wt 803	RSA 482-A:1; RSA 482-A:3; RSA 482-A:11; RSA 482-A:28-33
Env-Wt 804	RSA 482-A:1; RSA 482-A:3; RSA 482-A:11; RSA 482-A:28-33
Env-Wt 805	RSA 482-A:1; RSA 482-A:3; RSA 482-A:11; RSA 482-A:28-33
Env-Wt 806	RSA 482-A:1; RSA 482-A:3; RSA 482-A:11; RSA 482-A:28-33
Env-Wt 807	RSA 482-A:1; RSA 482-A:3; RSA 482-A:11; RSA 482-A:28-33